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Report Series 1990

90-2 Bill 107: The Police Services Act

Association of Municipalities of Ontario
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TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	i
Principles	i
Police Services Board	ii
Political Accountability	ii
Standards of Services	ii
Labour Relations	iii
INTRODUCTION	1
POLICE SERVICES - PROVINCIAL OR MUNICIPAL RESPONSIBILITY	1
Municipal Burden	2
Board Authority	3
Provincial Authority	5
ACCOUNTABILITY	8
Declaration of Principles	8
Municipal Police Service Boards	10
Budgetary Control	15
Accountability for Standards of Services	18
LABOUR RELATIONS	20
Senior Officers	20
Bargaining Categories	20

	Page
Management Rights	23
Conciliation	23
Composition of Boards of Arbitration	24
Criteria for Arbitration	25
Notice to Bargain and Delegation of Bargaining Authority	27
EMPLOYMENT EQUITY	27
PUBLIC COMPLAINTS	28
TABLE OF RECOMMENDATIONS	29
APPENDIX: SECTION MINORITY REPORTS	33
Rural Section Executive Committee (ROMA)	33
Small Urban Section Executive Committee (OSUM)	33

PRELIMINARY REVIEW OF BILL 107 - THE POLICE SERVICES ACT

EXECUTIVE SUMMARY

The Association of Municipalities of Ontario has recommended amendments to the Police Act for a number of years and several of the changes presented in Bill 107 are welcome improvements to the old legislation. However, the overriding theme of the Bill is to extend provincial control over policing services while requiring municipalities to pay the costs. In view of the consistent recommendations of the provincial government's own regional government review commissions, that have urged reforms to favour greater municipal control over the policies and budgets of police forces, this Bill is a great disappointment for the municipal level of government in Ontario.

In the introduction to this review it is noted that the Report of the Royal Commission on Metropolitan Toronto characterized provincially appointed local special purpose bodies as sub-units of provincial administration, rather than units of local government. Bill 107, by eliminating local control of some 51 police forces, by subjecting those forces and all "municipal" police forces to the control of municipal police services boards governed by a majority of provincial appointees and by extending control of police budgets with the provincially appointed Civilian Commission on Policing Services, has confirmed that policing is in fact a provincial service that is financed by municipal revenues. AMO recommends that policing be explicitly recognized as a provincial service and be financed by the provincial government or that Bill 107 be amended to eliminate provincial domination of municipal police services boards and municipal police budgets.

The review examines in detail the municipal burden of legal and political responsibility for the provision of policing services under the Bill and the complete provincial authority over these services, including budgeting. It is clearly stated and authoritatively supported that those who are responsible for a service must also be delegated management authority over that service.

Principles

The next section of the review examines the principle of accountability and how it is reflected in Bill 107. The declaration of principles from section one of the Bill stresses the need for policing services to reflect the needs of the communities being served. The Bill however entirely ignores the principle of direct local democratic political accountability as a key principle in ensuring that policing services do actually reflect the needs of the communities being served. AMO recommends that such a principle be added to the declaration of principles in the Bill.

Police Services Boards

The roles and membership of police services boards are then examined in some detail. The provincial government's regional review commissions are cited at length for their consideration of the subject. The regional reviews express concern that municipal policing services should be directly politically accountable to the communities being served via the appropriate municipal councils. It is noted that the regional reviews found no risk of "political" interference from having greater municipal council control over the policies of police forces. Indeed, the regional reviews concluded that there is greater risk of inappropriate political interference and of policing services not reflecting the needs of the community being served, where the provincial government controls the appointment of a majority of members to police services boards. AMO recommends that the majority of members of police services boards be municipally appointed and that the chairperson of each board be elected by the members of the board rather than appointed by the province as Bill 107 proposes.

Political Accountability

Municipal budgetary control of policing services is also strongly supported by the regional reviews and by AMO. The point is strongly made that policing services are important but are not uniquely different from other very important municipal services. Policing services expenses are one of the largest budget items for municipalities, yet they have virtually no control over budgeting since the ultimate authority rests with a provincially appointed body. AMO recommends that municipal councils have final authority over police budgets.

Standards of Service

Bill 107 creates new authority for the Solicitor General to establish detailed and extensive regulations setting standards of municipal policing services. AMO points out that in order to meet the policing service needs of a community, decisions regarding standards of services should be made by a body that is directly politically accountable to that community, the municipal council. The Bill provides adequate opportunity for a provincially controlled review of policing services without the need for regulated standards.

If the Ontario Civilian Commission on Policing Services (the Commission) determines that policing services are inadequate in a community, they can direct the local police services board to correct the situation. Unfortunately the Commission fulfils the role of being investigator, prosecutor and adjudicator, with no distinction in the Bill for separate individuals within the Commission to fulfil these roles. AMO recommends the deletion of the sections creating the Solicitor General's authority to establish standards of service. AMO recommends that the Commission be divided into an investigative branch and an adjudicative branch.

Labour Relations

In order to eliminate the real risk of conflict of interest for senior officers in fulfilling their management roles, AMO recommends that senior officers not be allowed to form collective bargaining units.

Bill 107 creates a new and unlimited right for police associations to establish bargaining categories for all of their members. AMO cites the review by the law firm of Hicks Morley Hamilton Stewart Storie of Toronto which points out that the risks of a large number of bargaining units engaged in whipsaw bargaining has caused the Ontario Labour Relations Board to limit the number of bargaining units in any collective bargaining situation. AMO recommends the deletion of the section creating this right for police associations.

The issue of non-negotiable management rights has been consistently raised by AMO in the past. The provincial government has protected its own necessary management functions from being subject to collective bargaining by stating these rights in the Crown Employees Collective Bargaining Act. AMO recommends that similar necessary management rights be listed in Bill 107.

Under Bill 107 conciliation is currently a requirement where there is a disagreement during the term of a collective bargaining agreement. However, it is an option of the Solicitor General when a collective agreement is being negotiated. Conciliation has such potential benefits that it is difficult to see why the Solicitor General would ever turn down a party's request for conciliation. AMO recommends that the Solicitor General be required to appoint a conciliator at the request of a party during the collective agreement bargaining process.

AMO recommends that boards of arbitration be a minimum of three persons, one appointed by each party and the chair appointed by the first two. If the first two cannot agree on a chairperson the Solicitor General must appoint the chair; however, to maintain the appearance of impartiality it is important that the Solicitor General only appoint a person who has not already been rejected by the first two arbitrators. AMO also recommends the establishment in the Bill of clear and detailed criteria for arbitration.

Under Bill 107 only the employees can issue a notice to bargain. It is not clear why management may not also issue a notice to bargain. The Bill also requires members of polices services boards to be part of the negotiating team but does not allow the senior management officer, the chief, to be part of the bargaining team. AMO believes that bargaining would be more efficient if the chief were part of the management negotiating team. AMO recommends that management be allowed to issue notice to bargain, that boards be allowed to delegate bargaining authority and that the chief be allowed to be a member of the bargaining team.

PRELIMINARY REVIEW OF BILL 107- THE POLICE SERVICES ACT

INTRODUCTION

"Municipal" Policing - A Provincial Service, Municipally Funded

In 1977 the Report of the Royal Commission on Metropolitan Toronto described provincially appointed local specia purpos bodies (including boards of commissioners of police) as "sub-units of provincial administration rather than units of local government." The report noted that it was important to state that distinction because it emphasizes that local special purpose bodies diminish local self government and increase provincial control over the administration of local services. To put it more simply, provincially appointed special purpose bodies are not in fact part of municipal governments, they are a part of the provincial government that administer government services on a localized basis. This was the status of boards of commissions of police in 1977. It has been strongly reinforced in Bill 107 - The Police Services Act, 1989.

BIll 107 requires municipal police services boards (equivalent to the boards of commissioners of police) to be established by all municipalities that have been legislated as being responsible for the provision of policing services. These boards will all be dominated by a majority of provincial appointees. Some 51 municipal councils will therefore lose policy and budgetary control of their police force to provincial appointees.

Under Bill 107 ultimate control of policing budgets remains with a provincial body, while municipalities are required to pay for these provincially directed and provincially budgeted policing services.

The expansion of the provincial appointee dominated police service boards, the maintenance of control of policing budgets through a provincially appointed body, combined with a significantly expanded role for the Solicitor General's office to regulate and enforce standards of policing service clearly show that the intent of Bill 107 is to make policing a highly mandated, highly regulated provincial service paid for by municipalities. This report reviews in detail all of these issues and the principles they represent.

This provincial government action is contrary to the principle of disentanglement of provincial and municipal roles in the provision of services. The Association of Municipalities of Ontario fundamentally disagrees with Bill 107 in its current form. If the provincial government believes policing to be a service that must be subject to complete provincial control then policing policy and financing should be explicitly declared a provincial responsibility. The provincial-municipal partnership in program delivery in general should be thereafter completely renegotiated.

Recommendation #1

That unless and until amendments are made to the composition of police service boards and the control of police budgets as per recommendations #3 and 4 of this report, the provincial government amend Bill 107 to explicitly state that the policy control and funding of police forces throughout Ontario is a provincial responsibility.

POLICE SERVICES - PROVINCIAL OR MUNICIPAL RESPONSIBILITY?

Municipal Burden

It is trite law to say that defining a service as a municipal service is constitutionally within the exclusive jurisdiction of provincial legislatures.[1] The Government of Ontario has defined policing as a municipal service in Bill 107. This is expressed in section 4 (1) of the Bill, "Every municipality to which this subsection applies shall provide adequate and effective police services in accordance with its needs." While this section does not explicitly say that municipalities have authority to provide these services, the requirement to provide the services logically implies delegation of the necessary authority.

It is also a basic legal principle of municipal law that municipalities have no authority that is not derived from provincial statutes. " Over the years, the courts have interpreted this derivation of authority quite narrowly, so that now, in almost all cases, a municipality may not exercise any power that has not been specifically delegated to it by a provincial statute."[2]

In Bill 107, the Police Services Act, 1989, municipalities then, are responsible for providing adequate police services.[3] If they fail to provide adequate police services the Ontario Civilian Commission on Police Services may have the Ontario Provincial Police (hereafter

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1 See Stenning, Philip C., Police Commissions and Boards in Canada (Toronto: University of Toronto, Centre of Criminology, 1981) for a legal and historical review of provincial delegation of police services.

2 The Royal Commission on Metropolitan Toronto, Detailed Findings and Recommendations, 1977, p.93.

3 Not all municipalities are responsible for providing police services. S. 4 lists them specifically, they include all regional municipalities (except Ottawa-Carleton), Metro Toronto and all cities, towns, villages and townships (other than those area municipalities within a region or Metro), with a potential exemption for towns with a population of less than 5,000 and with an exemption for villages and townships unless designated by the Lieutenant Governor in Council.

noted as the O.P.P.) provide such services as the Commissioner of the O.P.P. thinks necessary. The municipality is then required to pay for those services.[4] Municipalities are required to pay the costs of their own police force services and may levy varying rates in order to do so.[5] Municipalities are responsible for the civil liabilities committed by members of their force in the course of their employment. Municipalities may also be responsible for the legal costs of defending members of their force in civil and criminal actions.[6]

Delegation to municipalities of financial responsibility for police services in Bill 107 is specific and complete as noted above. However, while municipalities are made responsible for the provision and financing of police services, Bill 107 removes all necessary authority to actually implement the provision of these services from municipalities and places that authority with municipal police service boards. These boards are the Bill 107 equivalent of the earlier boards of commissioners of police. As with the previous boards the new municipal police services boards will be dominated by a majority of provincial appointees. All municipalities responsible for providing police services must do so through a municipal police services board.[7]

Board Authority

Section 27 of Bill 107 requires the establishment of police services boards for every municipality that maintains a police force. Municipalities are not required to maintain their own police force. Municipalities may share police services or contract with the O.P.P. for the provision of police services. However, both of these agreements are subject to the approval of the relevant municipal police services board(s).[8]

Most of the responsibility and authority for municipal police services boards is contained in section 31 of Bill 107

1. A board is responsible for the provision of police services and for law enforcement and crime prevention in the municipality and shall,

   (a) appoint the members of the municipal police force;

   (b) generally determine objectives and priorities with respect to police services in the municipality;

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[4] See s.9 of Bill 107.

[5] See ss.39 and 12 of Bill 107.

[6] See s.50 of Bill 107.

[7] See S.5 Bill 107.

[8] See ss. 5 and 10 (2) of Bill 107.

(c) establish policies for the effective management of the police force;

(d) recruit and appoint the chief of police and any deputy chief of police, and determine their remuneration and working conditions, taking their submissions into account;

(e) direct the chief of police and monitor his or her performance;

(f) establish an employment equity plan in accordance with section 48 and the regulations, review its implementation by the chief of police and receive regular reports form him or her on that subject;

(g) receive regular reports from the chief of police on disclosures and decisions made under section 46 (secondary activities);

(h) establish guidelines with respect to the indemnification of members of the police force for legal costs under section 50;

(i) establish guidelines for the administration by the chief of police of the public complaints system under Part VI;

(j) review the administration by the chief of police of the public complaints system and receive regular reports from him or her on that subject.

(2) The members of the police force, whether they were appointed by the board or not, are under the board's jurisdiction.

(3) The board may give orders and directions to the chief of police, but not to other members of the police force, and no individual member of the board shall give orders or directions to any member of the police force.

(4) The board shall ensure that its members undergo any training that the Solicitor General may provide or require.

(5) The board may, by by-law, make rules for the effective management of the police force.

(6) The board may establish guidelines consistent with section 46 for police officers' disclosure of secondary activities to the chief of police and for the decisions of the chief of police under subsection 46(4).

Aside from submitting the police budget to the municipality for approval, there is no requirement for police services boards to report to municipal councils in any form.

The Municipal Act and some regional acts provide municipal police services boards with additional authorities. These authorities include some areas that many people would not usually think of as police functions including licensing and regulating owners and drivers of taxi cabs, boat rentals, sale of newspapers and magazines on streets, salvage yards and second-hand goods shops, itinerant salespeople, food shops, fruit dealers, auctioneers, bill posters, sale of meat, barber shops and more.[9] For the Niagara Region in 1988 the work of four of the six full time staff members was devoted more or less exclusively to servicing the licensing function of the board.[10]

What was true of the role of boards of commissioners of police under the old Police Act remains true under Bill 107. As noted for the Niagara Region Review Commission,

> Thus, it is the Board and not the Regional Council which, under the Police Act, is responsible for policing, the maintenance of law and order and the government of the regional police force...
>
> ...It will be clear from this analysis that, with the exception of the right of appeal[of police budgets] to the Ontario Police Commission... the Board is recognised as having exclusive responsibility for all of the major decisions in the governance of the police force..."[11]

Provincial Authority

Bill 107 outlines in some detail the duties and powers of the Solicitor General. This is not present in the old Police Act. Many of the Solicitor Generals' duties include monitoring, inspecting, educating and coordinating functions that were formerly the domain of the Ontario Police Commission[12] Two of the new monitoring functions include ensuring that adequate police services are provided at the municipal and provincial levels and ensuring that police services boards and forces comply with prescribed standards of service. These duties are linked in the Bill with the duties of the new Ontario Civilian Commission on Police Services and the Solicitor Generals' expanded authority to regulate.

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9 See the Municipal Act ss. 227, 228, 234, & 235.

10 Stenning Philip C. The Niagara Regional Board of Commissioners of Police: Its Role and Accountability. Niagara Region Review Commission 1988, p.27.

11 Stenning op. cit. p.34.

12 See Bill 107 s.3 and compare with The Police Act S.42 through (g), (i), (j) and s.72.

Section 133 of Bill 107 is the section which provides authority for the Lieutenant Governor in Council to make regulations. There are a number of new areas but perhaps the most significant for municipalities are paragraph 1. prescribing standards for police services and 2. respecting the government, operation and administration of police forces.

The Bill does not provide for the direct enforcement of standards by the Solicitor General. This function is delegated to the new Ontario Civilian Commission on Police Services (hereafter noted as the "Commission"). The Commission membership is to be composed entirely of provincial appointees. As noted above, the monitoring functions of the old commission have been assigned to the Solicitor General. The role of the new Commission is largely inquisitorial in nature. The powers and duties of the Commission are chiefly investigating, judging and enforcing sanctions against police forces and police services boards that are determined to be in breach of the Bill.[13]

The provincial role in policing will be absolute under Bill 107. Even under the old Police Act the Royal Commission on Metropolitan Toronto found policing to be more accurately described as a provincial rather than a municipal service,

> Despite the close functional relationship of the police to other local service agencies, there is a deliberate and substantial organizational separation. Indeed, because provincial legislation dictates the creation of a separate board of commissioners of police with a majority of its members provincially appointed, because there is an appeal to a provincial body if the municipal council objects to the police budget, and because provincial regulations in this field are so extensive, the police function might well be thought to be more closely allied with the provincial government than the municipal. In any event, it is certainly true that decisions regarding policing are taken quite separately from the rest of the local decision-making process. Not only have local councils been prevented from influencing the course of police policy, but there has been a general lack of information made public about such policy... These circumstances have made it virtually impossible for either the public or its local elected representatives to make an informed assessment of the policies of the police commission and to evaluate the management and operation of the police force.[14]

The labelling of police forces, controlled by boards with a majority of provincial appointees, as "municipal police", when there is no accountability for the police function through the municipal government has led, at the very least, to public confusion. As noted by the Race

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[13] See ss. 21 through 26 of Bill 107. For more on the inquisitorial nature of the role of the Commission see below at pages 16 and 20.

[14] The Royal Commission on Metropolitan Toronto, op. cit.pp 276-7.

Relations and Policing Task Force, "The accountability of police was a constant theme during the Task Force's public hearings. Many witnesses enquired as to whom, exactly, the police are accountable, and to what extent. For much of the public, and indeed for police commissions themselves, the role, authority and responsibilities of Boards of Commissions of Police and Police Committees of council is unclear."[15]

While citizens may be uncertain whom to hold to account for the provision of police services, taxpayers are very certain as to who to hold to account for municipal taxes, "In fact the taxpayers do hold members of council politically responsible for the tax burden regardless of how great a portion of the load may be attributable to bodies over which council has little or no control."[16]

Policing services can indeed be seen as an appropriate service to be provided at the municipal level. As noted by the Royal Commission on Metro Toronto.

> In order to govern effectively such a diverse urban community as Metro, elected representatives must be able to see the community as a whole, and ensure that public responsibilities that are mutually interdependent - such as public health and social services, libraries and schools, policing and planning - are coordinated and integrated. In an urban environment already complicated and complex, such integration is inevitably impeded if the responsibility for these functions is fragmented between a general purpose municipal council on the one hand, and many special purpose authorities on the other... In addition, the multiplicity of special purpose bodies at the local level is a substantial impediment to rational financial planning and control in local government.[17]

However, if the policing service is to be a municipal service and paid for through municipal budgets, then logic dictates that the authority necessary to fulfill the function must be delegated to municipalities. The Provincial-Municipal Social Services Review, a recent review of provincial municipal relations in the delivery of social services states as a matter of principle that, "Authority should be commensurate with accountability and responsibility."[18]

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[15] Ontario, The Report of the Race Relations and Policing Task Force, April 1989, p.191.

[16] Crawford, K.G., Canadian Municipal Government, (Toronto: University of Toronto Press, 1964) at p. 130.

[17] The Royal Commission on Metropolitan Toronto. op. cit. p.98

[18] Provincial-Municipal Social Services Review a report prepared for the Ontario Ministry of Community and Social Services February, 1990 at pg.73

Bill 107, by labelling policing as a municipal responsibility, yet delegating all relevant authority to boards controlled by provincial appointees, is making the statement that authority is not commensurate with accountability and responsibility.

ACCOUNTABILITY

Declaration of Principles

Bill 107 begins with a statement of principles for the provision of police services throughout Ontario. AMO supports the inclusion of the statement of principles. However, the lack of expression of the principle of democratic accountability is a glaring indication of the provincial intent to keep policing a provincially controlled service, while operating this service under the municipal corporation and paid for under municipal budgets.

The Ottawa-Carleton Regional Review Commission has defined accountability in this manner.

> Accountability refers to the ability of the electorate to hold their elected representatives responsible ("to account") for their actions on Regional Council. Such accountability requires that the public understand the responsibilities, roles and functions of their elected representatives. In addition, in order to hold their elected representatives to account, members of the public must be able to effectively express their satisfaction or dissatisfaction through the ballot box. Also, if politicians are to be held to account, they must have some authority to deal with those matters for which they will be held responsible and they must have influence over decisions on those matters. Authority and responsibility, therefore, must be clearly defined and properly focused[19]

The provincial government's own commissioned reviews of regional governments have recommended that police services be under municipal control. This is in keeping with the principle that the provision of municipal services be subject to political accountability at the municipal level. The Chairman of the Haldimand-Norfolk Review expressed the importance of this principle, "Accountability to the electorate is the essence of local democracy, and no

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[19] Accountability and Representation: Phase I Report (Ottawa: Ottawa-Carleton Regional Review Commission, 1987), p.1; as quoted in Report and Recommendations (Niagara Falls: Niagara Region Review Commission, 1989), p. 6.

non-elected body is capable of supplanting it....Accountability is the public's [sic] insurance policy".[20] The current system and the proposed Police Services Act make police services "immune from the principle of accountability to the local electorate."[21]

One of the key concepts reflected in the declaration of principles is that police services must meet the needs of the communities served (note particularly principles 3, 5 & 6). The municipal level of government, with its frequent elections and publicly accessible decision making processes, is the most effective and politically accountable body for meeting the needs of the communities being served. If police services are to effectively meet the needs of the communities being served they can only do so if they are politically accountable to those communities.

The importance of political accountability in municipal institutions has been well expressed by Alexis deTocqueville, "Yet municipal institutions constitute the strength of free nations. Town meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men [sic] how to use and enjoy it. A nation may establish a free government, but without municipal institutions it cannot have the spirit of liberty."[22]

In a democratic society political accountability is not merely the most effective tool for assuring that government services meet the needs of communities; in democratic societies political accountability is a fundamental principle.

Recommendation #2

That the declaration of principles in section one be amended to include the following principle:

That the municipal provision of police services be directly politically accountable to the municipal councils of communities being served.

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[20] Haldimand-Norfolk Regional Review, A Reappraisal of the Regional Government Structure, (Haldimand-Norfolk Board of Review, December, 1989), p. 114.

[21] Ibid., p. 117.

[22] Alexis deTocqueville, Democracy in America (New York: Alfred A. Knopf, 1980) vol.I, p. 61; as quoted by the Niagara Region Review Commission, op.cit., p. 4.

Municipal Police Service Boards

In Ontario fifty-one of the 124 municipal police forces are currently governed directly by their local municipal councils.[23] Bill 107 will remove this local control by requiring all municipalities with police forces to have a police services board.[24] As with the existing boards of commissioners of police, the majority of the members of municipal polices services boards will be provincially appointed. Bill 107 goes one step further than the existing legislation, by giving the province the sole authority to appoint the chairperson of each police services board.

The apparent rationale behind the province's determination to maintain its control over the majority of appointments to police services boards, is to protect members of police forces from local political interference in police operations. However, there does not seem to be any evidence to indicate that this concern is well founded. The Niagara Region Review Commission notes that "Philip Stenning,[25] in his background study for this Commission, reported that an extensive study of police forces across Canada

> ...found no relationship between the composition of the governing authority and either the extent of governing authority involvement in decisions with respect to the police force, or the perceptions of police "independence" held by police chiefs and governing authority chairmen.

Stenning further argued that:

> In light of these findings and the historical and present reality in Canada and elsewhere, the argument that giving a local municipality control over the appointment of a majority of the members of its police governing authority would be likely to lead either to a reduction in the quality of police service or an outbreak of improper political interference in the policing function, seems hard to sustain in the 1980s. One would think that were this likelihood a reality, evidence of it would be readily apparent and not hard to document. Clearly there are effective ways of protecting police forces from the supposed evils which attend local democratic governance of them.[26]

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[23]. Stenning, The Niagara Regional Board of Commissioners of Police: Its Role and Accountability, p. 37.

[24]. S.27 of Bill 107 changes the name of existing Boards of Commissioners of Police to Municipal Police Service Boards. The role is substantially the same.

[25] Author of Police Commissions and Boards in Canada (Toronto: University of Toronto, Centre of Criminology, 1981) and The Niagara Regional Board of Commissioners of Police: Its Role and Accountability

[26] Senning, The Niagara Regional Board of Commissioners of Police: Its Role and Accountability, p.8; as quoted by the Niagara Region Review Commission, op. cit. p. 161

Indeed, the regional reviews commissioned by the province have consistently recommended that municipal councils have stronger links with police forces by having control over the majority of appointments to police services boards.

It is relevant to provide a few quotes from these regional reviews to show the extent and nature of this concern:

From the Haldimand-Norfolk Regional Review

> A timely reminder is that all members of boards of police are political appointees. To maintain that there is a distinction between members appointed by the provincial government and councillors appointed by the regional council for the purpose of keeping politics out of policing is an unrealistic assertion. The political involvement of the provincial government is merely substituted by that of the regional council.
>
> Politics and party politics are distinct entities. The expression "politics" although used in different senses can be simply illustrated. Few institutions are more remote from politics than the judiciary, yet, to quote Justice Jackson of the Supreme Court of the United States: "The court is occupied chiefly with statutes - and politics". Of course he used "politics" to mean policy-making and not partisanship. Used in this sense, it is hard to perceive a task more fundamentally political than the thrashing out (at a Board of Police meeting), of a new policy that would best meet the needs of the police and the requirements of a given community.[27]

From the Waterloo Region Review Commission.

> The present system where the provincial government, elected through a party system, appoints the majority of police commissioners is every bit as political and more potentially dangerous than a situation in which a government composed of twenty-four separately elected individuals with at least three different political stripes and seven different factions appoints the police governing body[28]

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[27] Haldimand-Norfolk Board of Review, op. cit. p.113

[28] Report of the Waterloo Region Review Commission (Waterloo: Waterloo Region Review Commission, 1979), p. 156; as quoted by the Niagara Region Review Commission, op. cit. p. 157.

From the Niagara Regional Review.

> In fact, it would seem that the only documented example of any outsider attempting to influence the police commission's actions came from a provincial official. According to testimony at the Commission of Inquiry into Niagara Regional Police Force, a member of the Ontario Police Commission, who had previously been Solicitor General of Ontario, told the Chairman of the Niagara Police Commission:
>
> The Solicitor-General appoints you. I am telling you that he is not pleased with you, and at such time as your position comes up for reappointment, well... need I say more?
>
> The chairman of the police commission considered this a "serious attempt to intimidate her.[29]
>
> ...The police must be insulated from the venal style of politics which would attempt to interfere in individual cases to either benefit or harm particular individuals. However, the police should not be insulated from the kind of politics which requires them to be accountable to the local community and makes them responsive to community values.[30]

An examination of the provincial process for making appointments to boards of commissioners of police found that, "...there are no clearly established criteria or procedures in the provincial appointment process. It is evidently a somewhat loose, informal process, and the fact that it is administered by a member of the Minister's political staff, rather than by a person or body within the permanent public service, may perhaps lend credibility to the belief that it is a "political" process.[31]

The other reason that the province wishes to maintain control of the majority of appointments to police services boards may be that the provincial government believes policing is too important for policies to be established by municipalities. In April 1988 the then Solicitor General made the statement "My Ministry takes the view that policing is a matter over which the province must exercise a significant degree of authority. For that reason, it is important that the Province maintain its dominant position on boards of commissioners of police."[32] If this is the case then why does the Solicitor General's office

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[29] Niagara Region Review Commission, op. cit. p. 157.

[30] Ibid. p. 158

[31] Stenning The Niagara Regional Board of Commissioners of Police: Its Role and Accountability. p.17.

[32] As quoted by the Niagara Region Review Commission, op. cit. p. 159.

create the appearance of municipal responsibility for policing and provide only very limited funding for police services?[33]

In England and Wales, all of the 43 regional police forces, with the exception of the London force (which is governed directly by the Home Secretary), are governed by police authorities which consist of a majority of locally elected members.[34]

In Canada, most municipal and regional police governing authorities have always consisted of a majority of locally elected members.[35] There are several Canadian examples of large municipal police forces where the governing authority is composed of a majority of locally appointed members. These cities include Montreal, Calgary, Winnipeg, Edmonton, and Halifax.[36]

If there should ever be a specific concern regarding the conduct of a member of a municipal police services board, Bill 107 provides a mechanism for investigation and the imposition of a penalty by the Ontario Civilian Commission on Police Services, a body appointed by the provincial government.[37]

Recommendation #3

That either the Police Services Boards become committees of council or the majority of members on Municipal Police Services Boards be appointed by municipal councils.

The section creating the mechanism for investigation by the Ontario Civillian Commission on Police Services has an important procedural omission. Under s. 25(4) members of police forces cannot be subject to a penalty imposed by the Ontario Civilian Commission on Police services without a hearing. However s.25(5) does not provide a member of a municipal police services board the right to a hearing before the Commission can impose a penalty. The current section indicates that the Commission can simply investigate the conduct of a board member and then impose a penalty. The right of a board member for an opportunity to confront the charges and present a defence is completely omitted. This right is so

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[33] Ibid p. 160.

[34] Stenning The Niagara Regional Board of Commissioners of Police: Its Role and Accountability. p.7.

[35] Ibid

[36] Haldimand-Norfolk review p. 114

[37] See S. 25 of Bill 107

fundamental to principles of natural justice that the failure to include it under this section must be a drafting oversight.

Recommendation #4

That section 25(5) of Bill 107 be amended by providing that the Commission cannot impose a penalty upon a member of a municipal of a municipal police services board until after a hearing has been held.

Section 28 of Bill 107 requires that the Lieutenant Governor in Council shall designate the chair of each municipal police services board. This is contrary to the old Police Act (S.10) which required boards of commissioners of police to elect their own chair annually. This is clearly a further direct intrusion by the provincial government into the policy control of municipally funded police services.

Section 28 appears to the based on recommendation #57 of the Report of the Race Relations and Policing Task Force. The relevant portion of that report expressed concern that the role, authority and responsibilities of police commissions be clearly identified. The report further states that residual authority be with the Solicitor General should police commissions abdictate their responsibility, including the authority to directly name the chair of each police commission (see pp. 192, 193). Unfortunately the report fails to provide any reasons for why the chair should be appointed by the Solicitor General and fails to link the naming of the chair with the concern about commissions abdicating their responsibility. Indeed the report expressly states that the issue of appointments to police commissions is beyond the mandate of the Task Force (p.194).

It has been the experience of the AMO membership that the relationship between members of boards is improved if they choose their own chairperson.

Recommendation #5

That section 28 (1) of Bill 107 be replaced by a new section 28 (1) that requires members of municipal police services boards to elect their own chairperson.

Budgetary Control

The new bill, as with the old Police Act, severely limits the municipal ability to have an impact on its own expenditures on police services. Police services boards, controlled by provincial appointees, set annual budgets for police services. If the municipality does not approve the budget, the matter will be decided by the provincial appointees on the Ontario Civilian Commission on Police Services.[38] The report for the Niagara Region Review Commission stated ,"As far as we have been able to learn, no municipality has ever successfully appealed a police budget to the Ontario Police Commission.[39] Apparently the Ontario Police Commission has operated on the basis that the onus is on the municipal council to prove that a proposed budget is unreasonable.[40]

There has also been concern raised about the Ontario Police Commissions'(OPC) appearance of impartiality.[41] This is due to the dual role of the OPC as being the advisory body working closely with senior police officers and making recommendations to police forces regarding levels of staffing etc. and thereafter having the adjudicative role in determining the appropriate budgets for those forces.

This system is completely contrary to the fundamental democratic principle of accountability to the local electorate. Indeed, this system is an aberration. As found by Stenning, "Ontario and British Columbia...appear to be the only jurisdictions in the common law world (and certainly in Canada) which thus deny to municipalities the ultimate authority to determine the size of their police force budget."[42]

The provincially appointed regional review commissions have not found sound reasons for having such a system. Clearly there is no legitimate reason for continuing this system. As found by the Niagara Region Review Commission,

> It is difficult to unearth valid reasons for having the police function exempt from this normal budgetary process. The argument sometimes made is that police services have to be well-funded because they are so important to the community. This Commission readily agrees that policing is an important function. However, health services, social services, environmental protection and a lengthy list of other functions are also important, but they must still go through the ordinary budget process. This Commission is confident that a

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[38] See Bill 107 s. 39.

[39] Stenning op. cit. p.37

[40] Ibid

[41] Ibid p.33.

[42] Ibid. p. 37.

> responsible regional council would not allow the quality of police services to slide. The citizens of the region would not stand for it. In fact, such a debate might lead to council recommending additional funds for policing.
>
> In sum, this Commission has found no compelling reason why the budget of the police force should not go through the same process as the budgets of all other regional agencies[43]

The Haldimand-Norfolk Board of Review is in agreement with the Niagara Review Commission.

> In setting a budget there should be room for adjustment in the expenditure of individual services in response to the projected global level of regional expenditure. Expediency may tip the scales when the claims of different services are nicely balanced. It is a practice that has been duly tested by experience and has been found to be conducive to the general welfare of the taxpayers.
>
> The present budget setting and approval process for police services is immune from the sensible "give and take" of expediency, logic and utility that shape the regional budget of all services. But on top of that defect there is also immunity from accountability to the local electorate, the first requirement any system of local democratic government.
>
> It has been suggested to the Board of Review that the move to give the regional council a dominant position in its relation to the Board of Police may result in an inadequate or insufficient budget for police services. Not persuaded by these gloomy forebodings, we assume that a board of police, a regional council and an electorate will work together with responsibility, common sense and conscience[44]

Control of budgeting for police services as a method of ensuring a certain level of service has also been discounted,

> The availability of other means through which the Province could exert pressure on the Region to ensure that it provides an adequate police force with an adequate budget, makes it clear that the justification for the existing legal arrangements with respect to the police budget does not derive from a need to maintain minimum standards. Rather, the justification (which has never been clearly articulated and debated by the Government of Ontario as

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[43] Ibid. p. 167.

[44] Haldimand-Norfolk Board of Review, op. cit. pp. 115, 116.

> far as we have been able to determine) seems to be couched in terms of the fear of improper local political influence over the operations of the police force. For reasons which we have already set out above, we do not think that this concern over political interference withstands close scrutiny in the late 1980's. Even if there is a valid fear of improper political interference in the affairs of the police force by a locally elected Regional Council or its members (and we concede that there may well be), there are other much more direct, appropriate and probably more effective ways of guarding against this than by denying the local body ultimate authority with respect to the budget of which it is responsible for raising over 80%. It seems hard to believe that all the other jurisdictions in the world which permit this are mistaken in this view.[45]

Police budgets are major expenditure items for municipalities. In Halton Region more than half the tax supported budget of the region supports police services.[46] In Haldimand-Norfolk the police expenditure for 1988 accounted for 25% of the regional tax levy.[47] For Niagara Region police expenditures accounted for almost 52% of all property tax plus conditional grant revenue in 1988.[48]

The most recent figures available indicate that in 1987 Ontario municipalities spent more than 951 million dollars on police services.[49]

Clearly the principle of accountability has little meaning without final control over such significant municipal expenditures.

Recommendation #6

That S.39(3) be deleted and replaced with a subsection that indicates the decisions of the municipal council, with respect to the police services' board budget shall be final and binding on the police services board.

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[45] Stenning op. cit. p.39.

[46] Graham, J. Report to the Chairman and Members of the Administration and Finance Committee No.C1/90, Regional Municipality of Halton.

[47] Haldimand-Norfolk Board of Review, op. cit. p.111.

[48] Niagara Region Review Commission, op. cit. p. 165.

[49] From Ministry of Municipal Affairs staff.

Accountability for Standards of Services

Bill 107 creates new powers for the Solicitor General to prescribe standards of services via regulations and to have the Ontario Civilian Commission on Police Services enforce those standards.[50]

The standard of policing services is directly related to the issues of political accountability of police service boards for their control over the policy direction of police services, and to municipal control over municipal budgets. The clear and simple logic is the same. If police services are to meet the needs of the community, decisions regarding the standards of such service should be made by a body that is directly accountable to the community.

As has been pointed out above, police services are only one of a number of important local services. The impact of these services can often overlap and the decision of which service best meets the needs of the community is most effectively (and accountably) made at the local level. An excellent example is again provided by the Niagara Regional Review.

> Regional council, however, is well-equipped to make these trade-offs and does so for other regional services. Unfortunately, it is denied this right for police services. Regional council might feel that crime could be reduced more effectively by hiring one more social worker than by hiring one more police officer, but it never has the opportunity to consider this possibility. The current division of responsibility certainly raises the possibility of inefficiency because it limits the ability of a single body to coordinate the delivery of all local services.[51]

As with the old Police Act, the new Bill still provides a provincial review mechanism without the need for regulated standards. If necessary the Solicitor General or a municipal council can request the Commission to investigate the police needs of a municipality, the administration of the police force and the manner in which police services are provided.[52] If the Commission finds that the police services are inadequate it may direct the local board to rectify the situation. If the board does not comply, the Commission may request that the O.P.P. provide such services and charge the costs back to the municipality.[53]

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[50] See Bill 107 ss.3(2) (b), 22 (1) (a), 23, 133 (1) 1.

[51] Niagara Region Review Commission, op. cit. p. 165.

[52] See S. 25 (1) of Bill 107.

[53] See s. 9 of Bill 107.

Unfortunately the Bill requires the Commission to issue an order to comply based solely on the advice of the Solicitor General. Thereafter the Commission may hold a hearing and order sanctions. This places the Commission in the position of first issuing an order which presumes there is a breach of the regulations and then conducting a hearing to determine if there is a breach.

Under section 25 of the Bill, the Commission may conduct its own investigation into the administration of a police force or the manner in which police services are provided for a municipality. The Commission is required to communicate its findings to the Solicitor General. The Commission may then conduct a hearing and order sanctions. These procedures place the Commission in the role of both investigator and adjudicator on the findings of its own investigation. The roles of the Commission would be fulfilled with a greater appearance of impartiality if the functions of investigation and adjudication were conducted by separate and independent branches of the Commission.

If appropriately divided into separate branches for investigation and adjudication, the mechanism for review and enforcement by the Commission, that can be undertaken at the request of the Solicitor General, provides protection for the public on the issue of adequacy of police services, should a serious question ever arise. Indeed, the Solicitor General is required to monitor police forces to ensure that adequate and effective police services are provided at the municipal and provincial levels.[54] Provincially prescribed standards of policing services are not only unnecessary, but by not being subject to local political accountability, they have greater risk of not meeting the needs of the community and of being inflexible and inefficient.

Recommendation #7

(a) That the following parts of Bill 107 be deleted:
S. 3 (2) (b), S. 22 (1) (a), S. 23, S. 133 (1) 1.

(b) That the Ontario Civilian Commission on Police Services be divided into an investigative branch and an adjudicative branch.

(c) That Section 25 (1) be amended to include authority for the Commission to hold a hearing.

(d) That Section 9 (1) and (2) be amended to require the Commission's findings to be based on a hearing at which the relevant municipal police services board and the relevant municipality may be parties.

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[54] See Bill 107 S.3 (2) (a).

LABOUR RELATIONS

Senior Officers

Bill 107 allows for senior officers to form their own association for bargaining purposes. However, it does not require senior officers to form their own association in order to be members of a collective bargaining unit. The bill is so worded as to allow senior officers to be in the same bargaining group as the other members of the police force.[55]

Senior officers' duties are part of the management function for police forces. Inspectors are at times required to perform the functions of deputy chiefs. Under the Police Act regulations there are four ranks of officer below the deputy chief that are still senior officers.[56] The potential for conflict of interest is clear. Even if senior officers form their own association or bargaining category within the broader association, all of the senior officers of a police force will be in the same group for collective bargaining purposes.[57] Individual senior officers within this bargaining group will at times be required, as management, to interpret and enforce the terms of their own agreement against their fellow senior officers with whom they are united for bargaining purposes. This places senior officers in an untenable position.

The principle of not having management level personnel in collective bargaining groups is clearly followed by the provincial government in its own labour relations legislation. The Crown Employees Collective Bargaining Act excludes persons employed in a managerial or confidential capacity from the definition of "employee".[58]

Bargaining Categories

As noted above,[59] Bill 107 includes a new provision that allows a police association to assign members to different categories for collective bargaining purposes and each category shall be treated as if it were a separate police force for those purposes.

An excellent analysis of this new provision and its potential impacts has been performed by the law firm of Hicks Morley Hamilton Stewart Storie of Toronto, which is reproduced below.

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[55] See Bill 107 ss. 2, 113, 117

[56] See Regulation 792, s.5.

[57] See Bill 107 s. 117, which allows an association to assign members to categories for bargaining purposes.

[58] See Crown Employees Collective Bargaining Act. R.S.O. 1980, c. 108, s.1 (1), (f) (iii).

[59] See note #57.

Recommendation #8

(a) That section 31 (responsibilities of boards) be amended by including in clause (d) recruitment and appointment of senior officers and determining their remuneration and working conditions.

(b) That S. 114 be amended by adding a new subsection indicating that the working conditions and remuneration of senior officers shall be determined under clause 31 (1) (d)(responsibilities of boards) and not under this Part.

There is no explanation of what is meant by the expression "different categories". At the very least it would appear to empower the Association to divide a Force and its members into various bargaining units composed of, for example, certain classifications or ranks. In other words, where now we have one bargaining unit of constables, sergeants, staff sergeants and sometimes cadets, it would be within the power of the Association to bargain for each of these ranks as a different category and if necessary to go to arbitration independently of the other ranks.

The same could occur in the civilian side where there could be distinctions made between quasi-police personnel (By-law enforcement officers, court security officers, etc.), office staff, technicians, dispatch and communication personnel, etc. The possibilities of fragmentation are endless and astonishing.

Under most collective bargaining systems, the power to determine particular bargaining units rests with a government tribunal like the Ontario Labour Relations Board. It determines what are the "appropriate" bargaining units. Most tribunals like the Labour Board refuse to permit an undue fragmentation of the personnel of one employer. Typically, the personnel are divided into a plant unit, an office unit and, sometimes, a technical unit. Many unions have in the past attempted to balkanize such units further by, for example, dividing a plant unit into skilled personnel and non-skilled personnel. Generally, labour boards have opposed such fragmentation vigorously.

The reason for such opposition is not difficult to understand. Whenever you have more than one bargaining unit in an establishment you enable the members of each unit and the union representing the members to pursue different bargaining objectives. This enables unions to practice effectively the "whipsaw" technique of attempting to achieve a certain gain in bargaining in one unit but to ignore that gain and to seek another gain with another

bargaining unit. It makes it more difficult for the employer to maintain a common set of policies. (e.g. benefit plans). This difficulty is further exacerbated in any bargaining system which has compulsory interest arbitration as its impasse resolution system since the employer has even less control.

Why this power should now be granted to a local Police Association is difficult to comprehend. Most large BPC's [Boards of Police Commissioners] would not object to a division between uniform and civilian personnel. In fact, in most of the large Forces there are now at least two Bargaining Units representing respectively the Uniform Police Officers up to the rank of staff sergeant and the civilian personnel encompassing all other classifications. If the new proposal was intended to reflect current practices, the new Act could provide for two bargaining groups represented by the same Association, one constituting civilian employees, the other constituting Police Officers. Any further breakdown would not appear justified.

If, notwithstanding, there remains the desire to allow greater flexibility to Associations and Boards, we would respectfully suggest that the approval to have more than two bargaining units for a single Force ... should rest with an outside agency such as the Solicitor General or the Ontario Labour Relations Board or COPS [Civilian Commission on Police Services].

If this proposal is not changed, we fear that there will be increasing instability in Police Association-BPC bargaining. This will result not only in higher costs of policing but in a more protracted and time consuming bargaining process with all its attendant problems. Moreover, the potential of several sets of bargaining of every BPC would increase the demands on the individual members of a BPC.

We believe this proposal ought to be strenuoulsy resisted.

AMO concurs with this analysis and the concerns it expresses.

Recommendation #9

That s.117 be deleted from Bill 107.

Management Rights

The ability of management to properly fulfill its responsibilities requires the exercise of clear authority over certain operational functions. This authority is so clearly necessary that it should not be subject to negotiation under collective bargaining. The provincial government has legislated its own such authority under the Crown Employees Collective Bargaining Act. Section 18 (1) of that act is reproduced below:

> Functions of employer 18-(1) Every collective agreement shall be deemed to provide that it is the exclusive function of the employer to manage, which function, without limiting the generality of the foregoing, includes the right to determine,
>
> (a) employment, appointment, complement, organization, assignment, discipline, dismissal, suspension, work methods and procedures, kinds and locations of equipment and classification of positions; and
>
> (b) merit system, training and development, appraisal and superannuation, the governing principles of which are subject to review by the employer with the bargaining agent,
>
> and such matters will not be the subject of collective bargaining nor come within the jurisdiction of a board.

A similar provision is entirely missing from Bill 107. Thus issues regarding management authority that should not be subject to collective agreements are potentially subject to those negotiations.

Conciliation

Bill 107 clearly indicates that, during negotiations for a collective agreement, either party may ask the Solicitor General to appoint a conciliation officer.[60] However, the Solicitor General has the option of appointing a conciliator or not. It is difficult to imagine the basis for a decision by the Solicitor General not to appoint a conciliator when one of the parties had requested conciliation. In a situation of dispute settlement under an existing collective agreement, Bill 107 requires the Solicitor General to appoint a conciliator at either parties' request. Conciliation has the obvious value of assisting the parties to arrive at a settlement,

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[60] See Bill 107 s.120 (1), (2).

Recommendation #10

That Bill 107 be amended to include the following provision:

(1) Every collective agreement shall be deemed to provide that it is the exclusive function of the employer to manage, which function, without limiting the generality of foregoing, includes the right to determine,

(a) employment, appointment, complement, organization, assignment, work methods and procedures, kinds and location of equipment and classification of positions, and,

(b) promotion, demotion, transfer, lay-off, reappointment, merit system, training and development, and appraisal, and,

(c) subject to this Act and the Regulations thereto, demotion, dismissal, discipline and suspension,

and such matters shall not be the subject of collective bargaining nor come within the jurisdiction of an arbitrator or board of arbitration.

rather than have one imposed by arbitration. The requirement for the Solicitor General to appoint a conciliator should be extended to the stage of negotiations for a collective agreement.

Recommendation #11

That section 120(2) be amended to indicate that the Solicitor General shall appoint a conciliation officer at the request of either party.

Composition of Boards of Arbitration

Bill 107 provides that, if the parties agree, an arbitration board be composed of one person appointed by each party and a chairperson appointed by the Solicitor General, otherwise it shall consist of one person appointed by the Solicitor General.[61]

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[61] See Bill 107 S.121 (2).

The three member arbitration board, with one representative selected by each party is an important means of assuring that each party's interests will be adequately represented. Such protection of interests is improved if the Chairperson of the Board is selected by the first two board members. This system is legislated for crown employees under the Crown Employees Collective Bargaining Act.[62]

AMO recommends the three member arbitration board model, with one significant amendment, as that appropriate for use under Bill 107. Where the first two members cannot agree upon selection of a Chairperson, the Solicitor General shall make the selection. This is, of course, necessary to resolve the impasse. However, the person that the Solicitor General selects should not be a person that either party's representative has previously rejected. The role of the Chairperson will be to decide questions upon which the other two cannot agree. It is vital that the Chairperson be perceived as acting as impartially as possible. However, this impartiality will be called into question by the party that had originally rejected the individual that was selected by the Solicitor General. Chairpersons for arbitration boards selected by the Solicitor General should therefore not be individuals that have previously been considered and rejected by either of the other two members.

Recommendation #12

That section 121 of Bill 107 be amended to indicate that arbitration boards shall consist of one person selected by each party and a chair selected by those two members. If the two members cannot agree upon a chairperson then the Solicitor General shall appoint a chairperson from amongst those persons who have not been previously considered and rejected by the other two members.

Criteria for Arbitration

Bill 107 requires arbitration boards to take into account the interest and welfare of the community served by the police force as well as any local factors affecting the community.[63]

While this is an improvement upon the old act, which had no criteria outlined at all, it is still inadequate.

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[62] See Crown Employees Collective Bargaining Act, R.S.O. 1980 C. 108, S. 11.

[63] See Bill 107 s.121 (5).

The purpose of establishing criteria for arbitration awards is to provide assurance that awards promote the public interest and that reasoned decisions explicitly take into account all relevant information to make them more comprehensible and consistent.

The Crown Employees Collective Bargaining Act also includes a substantial set of arbitration criteria that go far beyond the proposed criteria in Bill 107.[64]. AMO has consistently noted the need for the use of similar criteria to be extended to the municipal sector.[65]

Recommendation #13

That Bill 107 be amended by deleting the current clauses 121(5) and substituting the following:

(5) In the conduct of proceedings before it and in rendering a decision in respect of a matter in dispute, the board of arbitration shall consider any factor that to it appears to be relevant to the matter in dispute including,

(a) the desirability to maintain appropriate relationships in the terms and conditions of employment as between different classes of employees,

(b) general economic conditions in the community, the province and the nation and the policies of the Government of Ontario,

(c) the interest and welfare of the public,

(d) the terms and conditions of employment in other municipalities,

(e) the needs of the council of the municipality for qualified employees,

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[64] See Crown Employees Collective Bargaining Act, s. 12 (2).

[65] See AMO Report 86-2 Compulsory and Binding Arbitration: A Proposal and AMO Report 87-9 A Proposed Model of Collective Bargaining and Required Amendments for The Police Act.

Notice to Bargain and Delegation of Bargaining Authority

Sections 118 and 119 of Bill 107 indicate that the members of a police force may give notice to bargain and that the municipal police services board, or members of it, shall directly engage in bargaining.

It is unclear why the employer may not be the party to give the notice to bargain. The employer may wish to table bargaining proposals to get bargaining under way, but under Bill 107 the employer must wait to receive the notice to bargain from the employees first.

It is also unclear why the members of the police services board must be personally involved in all stages of bargaining. The Bill does allow for one legal counsel and one advisor for each of the bargaining committee and the board to be present at bargaining sessions. The Bill does not allow for the board to be represented by an agent for the purpose of bargaining, nor does it allow the chief of police to be part of the management negotiating team.

Recommendation #14

That Bill 107 be amended to allow police services boards to issue notice of desire to bargain, to allow boards to be represented by agents at bargaining sessions and to allow chiefs of police to be part of the management negotiating team.

EMPLOYMENT EQUITY

Bill 107 requires every police force, both municipal and O.P.P., to have an employment equity plan.[66] These plans must be designed to eliminate systematic barriers to recruitment and promotion of groups of persons to be prescribed in regulations. The plans must also include positive measures for recruitment and promotion of those persons to make police forces more representative of the communities being served. The plans must have specific goals and timetables and must be submitted to the Solicitor General for approval.

The Solicitor General is required to monitor the establishment and implementation of employment equity plans.[67] The Ontario Civilian Commission on Policing Services is

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[66] See Bill 107 s. 48.

[67] See Bill 107 s. 3 (2) (c).

responsible for enforcing the employment equity provisions of the Bill and may impose sanctions including suspension or dismissal of a chief or a whole board, where they determine after a hearing that the Bill or regulations have not been complied with. Having made all reasonable efforts to comply, yet still being unable to meet goals and timetables, is a specific allowable defence under the Bill.

PUBLIC COMPLAINTS

Bill 107 establishes a uniform province-wide system for handling complaints of members of the public about the conduct of a police officer.[68] Every chief of police is required to establish and maintain a public complaints bureau. There is an exception for forces with fewer than twenty officers; these forces may have their bureau operated by another force. The staffing requirements for these bureaus will be entirely dependent on the caseload.

Under the proposed system a member of the public may lodge a complaint at any bureau, police station or detachment and that complaint shall be forwarded to the appropriate bureau and the provincial Police Complaints Commissioner. The Commissioner is a provincial government appointee. Investigations of complaints can be conducted by the appropriate bureau or the Commissioner. The chief and the Commissioner are provided with regular reports on the progress of investigations.

The process includes potential for informal resolution as well as ultimately a hearing by a board of inquiry with potential for appeal to the Divisional Court. Both the complainant and the officer receive copies of interim and final reports. They are also allowed to be represented by counsel at hearings.[69] The Bill however does not clearly indicate that the complainant and officer have the right to be represented by counsel from the first stages of the process.

Recommendation #15

That the public complaints process of Bill 107 be amended to clearly indicate that the complainant and officer have the right to be represented by counsel and that the bureau that initiates the process shall inform the complainant of that right and the officer's chief shall inform the officer of that right.

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[68] See Part VI. ss 72 through 111 of Bill 107.

[69] See Bill 107 s. 95 (7)

TABLE OF RECOMMENDATIONS

Page

Recommendation 1 2

That unless and until amendments are made to the composition of police service boards and the control of police budgets as per recommendations #3 and 4 of this report, the provincial government amend Bill 107 to explicitly state that the policy control and funding of police forces throughout Ontario is a provincial responsibility.

Recommendation 2 9

That the declaration of principles in section one be amended to include the following principle:

That the municipal provision of police services be directly politically accountable to the municipal councils of communities being served.

Recommendation 3 13

That either the Police Services Boards become committees of council or the majority of members on Municipal Police Services Boards be appointed by municipal councils.

Recommendation 4 14

That section 25(5) of Bill 107 be amended by providing that the Commission cannot impose a penalty upon a member of a municipal of a municipal police services board until after a hearing has been held.

Recommendation 5 14

That section 28 (1) of Bill 107 be replaced by a new section 28 (1) that requires members of municipal police services boards to elect their own chairperson.

Recommendation 6 17

That S.39(3) be deleted and replaced with a subsection that indicates the decisions of the municipal council, with respect to the police services' board budget shall be final and binding on the police services board.

Recommendation 7 19

(a) That the following parts of Bill 107 be deleted:
S. 3 (2) (b), S. 22 (1) (a), S. 23, S. 133 (1) 1.

(b) That the Ontario Civilian Commission on Police Services be divided into an investigative branch and an adjudicative branch.

(c) That Section 25 (1) be amended to include authority for the Commission to hold a hearing.

(d) That Section 9 (1) and (2) be amended to require the Commission's findings to be based on a hearing at which the relevant municipal police services board and the relevant municipality may be parties.

Recommendation 8 21

(a) That section 31 (responsibilities of boards) be amended by including in clause (d) recruitment and appointment of senior officers and determining their remuneration and working conditions.

(b) That S. 114 be amended by adding a new subsection indicating that the working conditions and remuneration of senior officers shall be determined under clause 31 (1) (d)(responsibilities of boards) and not under this Part.

Recommendation 9 22

That s.117 be deleted from Bill 107.

Recommendation 10 24

That Bill 107 be amended to include the following provision:

(1) Every collective agreement shall be deemed to provide that it is the exclusive function of the employer to manage, which function, without limiting the generality of foregoing, includes the right to determine,

(a) employment, appointment, complement, organization, assignment, work methods and procedures, kinds and location of equipment and classification of positions, and,

(b) promotion, demotion, transfer, lay-off, reappointment, merit system, training and development, and appraisal, and,

(c) subject to this Act and the Regulations thereto, demotion, dismissal, discipline and suspension,

and such matters shall not be the subject of collective bargaining nor come within the jurisdiction of an arbitrator or board of arbitration.

Recommendation 11 24

That section 120(2) be amended to indicate that the Solicitor General shall appoint a conciliation officer at the request of either party.

Recommendation 12 25

That section 121 of Bill 107 be amended to indicate that arbitration boards shall consist of one person selected by each party and a chair selected by those two members. If the two members cannot agree upon a chairperson then the Solicitor General shall appoint a chairperson from amongst those persons who have not been previously considered and rejected by the other two members.

Recommendation 13 26

That Bill 107 be amended by deleting the current clauses 121(5) and substituting the following:

(5) In the conduct of proceedings before it and in rendering a decision in respect of a matter in dispute, the board of arbitration shall consider any factor that to it appears to be relevant to the matter in dispute including,

(a) the desirability to maintain appropriate relationships in the terms and conditions of employment as between different classes of employees,

(b) general economic conditions in the community, the province and the nation and the policies of the Government of Ontario,

(c) the interest and welfare of the public,

(d) the terms and conditions of employment in other municipalities,

(e) the needs of the council of the municipality for qualified employees,

Recommendation 14 27

That Bill 107 be amended to allow police services boards to issue notice of desire to bargain, to allow boards to be represented by agents at bargaining sessions and to allow chiefs of police to be part of the management negotiating team.

Recommendation 15 28

That the public complaints process of Bill 107 be amended to clearly indicate that the complainant and officer have the right to be represented by counsel and that the bureau that initiates the process shall inform the complainant of that right and the officer's chief shall inform the officer of that right.

APPENDIX

SECTION MINORITY REPORTS

Rural Section (ROMA)

Section 4(7) of Bill 107

Section 4(7) of the draft legislation states that every municipality to which the subsection applies "shall provide adequate and effective police services in accordance with its needs." The subsection further defines municipality as "cities, towns, villages and townships (other than area municipalities within regional or metropolitan cities and regional and metropolitan municipalities)." (The exceptions are the district of Muskoka, the Regional Municipality of Ottawa-Carlton and the County of Oxford).

Section 4(6) further states that the Lieutenant Governor in Council may exempt any town having a population of less than 5,000.

The Rural Section Executive Committee does not support these above provisions of the bill, as many municipalities of over 5,000 population currently receiving free OPP police servicing, will not in the future. All municipalities over 5,000 population will have to provide and pay for police services, either by establishing their own municipal police force or by contracting for OPP policing.

The Rural Section Executive Committee recommends that Section 4(7) of the bill be amended to provide that all villages and townships currently receiving free OPP services, would continue to be exempted from the responsibility for providing policing services.

Small Urban Section (OSUM)

The Small Urban Section Executive Committee supported the position that all members of the proposed municipal police services boards should be appointed by municipal council. The Small Urban Section does not agree with the provisions of the bill that state the Lieutenant Governor in Council appoint the chair and the majority of members of municipal police services boards.

PUBLICATIONS ISSUED IN THE "AMO REPORT" SERIES

88-1	Education Funding in Ontario
88-2	Preliminary Response to New Directions for Child Care
88-3	1988 Provincial Budget Submission
88-4	AMO Submission to Provincial Cabinet
88-5	AMO Response to the Report of the Advisory Committee on County Government: "Patterns for the Future"
88-6	Pressures on the Partnership: Response to the Provincial-Municipal Social Services Review Discussion Paper
88-7	AMO's Unconditional Grants Proposal for 1989
88-8	AMO's Response to "Rental Housing Protection Act: Future Directions"
88-9	Municipal Authority to Regulate Occupancy on the Basis of Relationship
88-10	AMO Response to Bill 170 - Aggregates Resources Act
88-11	AMO Position on "Controlling Industrial Discharges to Sewers"
88-12	AMO Response to "A Review of the Conservation Authorities Program"
88-13	AMO Response to Bill 174, The Intervenor Funding Project
89-1	AMO Brief to the Province of Ontario: 1989-90 Transfer Payment Announcement
89-2	AMO Response to "Financing Growth-related Capital Needs"
89-3	AMO Report on the Draft Housing Policy Statement
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89-8	Response to "County Government in Ontario"
89-9	Response to Draft Wetlands Planning Policy Statement
90-1	"A New Decade - A New Partnership"
90-2	Bill 107: The Police Services Act
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